Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund,

Petitioner,

v.

ROCK-N-AROUND TRUCKING, INC.,
an Illinois corporation,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the provisions of a collective bargaining agreement requiring contributions to Taft-Hartley Trust Funds based on work covered by a collective bargaining agreement and actually performed by owner-operators, who are not employees, violates 302(a)(1) of the Labor Management Relations Act (29 U.S.C.A. § 186(a)(1)).

PARTIES TO THE PROCEEDINGS

Petitioner:

Lou Mazzei is a Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund. The Funds are Taft-Hartley Trust Funds sponsored by Local 786 of the International Brotherhood of Teamsters and are jointly trusteed with management trustees from employers in Cook County, Illinois engaged in the transportation of building materials.

Respondent:

Rock-N-Around Trucking Inc. is an Illinois corporation engaged in the transportation of building materials. Respondent signed a labor agreement with Local 786 of the International Brotherhood of Teamsters and it operates through the use of employee drivers and owner-drivers who own and lease their trucks to Respondent pursuant to written agreement.

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STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on April 16, 2001. The Petition for a Writ of Certiorari therefore is due on or before July 5, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Labor Management Relations Act

§ 186. Restrictions on financial transactions

(a) Payment or lending, etc., of money by employer or agent to employees, representatives, or labor organizations.

It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser or consultant to an employer or who acts in the interest of an employer to pay, lend, deliver, or agree to pay, lend, or deliver, any money or thing of value —

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee, directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

* * *

(c) Exceptions

The provisions of this Section shall not be applicable.

(5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their

families, and dependents (or such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either, from principle or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the

results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by an employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at education institutions, (B) child care centers for preschool and school age dependants of employees.

STATEMENT OF THE CASE

This case arises from a contract dispute between multi-employer pension and welfare benefit funds and a contributory employer over the legality of the payment of pension and welfare contributions on the basis of work performed by certain truck drivers who own the trucks that they operate.

The Petitioner, a Trustee of the Funds, sued the Respondent in order to enforce a contract provision which required Respondent to contribute into a trust certain amounts based on weeks worked by owner-drivers covered by the agreement. The contract contained a specific provision regarding owner-drivers who operated their own vehicles and provided that such owner-drivers would be "covered within the terms and conditions of the agreement".

Respondent had a number of owner-drivers providing trucking services and remitted contributions based on the weeks worked by certain of those drivers to the Funds. Petitioner filed a lawsuit seeking to determine the full number of weeks worked by all of the owner-drivers and through discovery, conducted an audit claiming contributions for the weeks worked on the basis of the contract that Respondent had signed with the Union. Respondent denied its liability to make the contributions sought by the audit on the basis that the contributions were not owed under the language of the contract and even if the contributions were owed, payment was illegal under the provisions of 29 U.S.C. § 186(a)(1) as the truck drivers were not employees.

The parties submitted the case to the District Court on cross-motions for summary judgment. The Court found that the contract language did require contributions based on the weeks worked by the owner-drivers, however, the Court noted that this was a "hollow victory" as contributions were barred by 29 U.S.C. § 186(a)(1) as the owner-operators were not employees. (Appendix B p. 35a).

Petitioner appealed to the Seventh Circuit Court of Appeals. The Court affirmed the District Court's determination that owner-drivers were not employees and the ruling that contributions were barred by 29 U.S.C. § 186(a)(1) as the employment status of the owner-drivers determined the legality of contributions under the L.M.R.A.. The Court cited to the decision of the Ninth Circuit in *Todd v. Benal Concrete Construction Co.*, 710 F.2d 581 (9th Cir. 1983) and stated that:

> Like *Benal*, RNA cannot be required to contribute to the Funds for each of the owner-drivers, when we have determined are independent contractors, when those contributions are not based on the number of hours worked.

(Appendix A p. 18a)

The practical consequence of the applications of the District Court and Seventh Circuit ruling is to provide that contributions may not be made based on work performed by non-employees, even though the contract language at issue bases the contribution amounts on work actually performed. The Seventh Circuit opinion discusses the language of the contract, however, it does not quote the specific provisions which read as follows:

APPENDIX A
HEALTH AND WELFARE

> A.1 Each Employer shall contribute to the (Local 786) Building Material, Chauffeurs, Teamsters and Helpers Welfare Fund of Chicago, which shall be jointly administered by Employer Trustees and Union Trustees as provided in the Trust Agreement, the amount per week stated in Article 16 (16.2-1)

as of the appropriate date stated therein for each employee covered by this Agreement who performs work on any two calendar days in any calendar week, regardless of the number of hours worked, beginning with the first such week of employment. Contributions shall also be made for the weeks of paid vacation, but not if the employee's vacation time occurs during a period of layoff, leave of absence or illness.

APPENDIX B
PENSION

B.1 Each Employer shall contribute to the (Local 786) Building Material Pension Fund, the amount per week stated in Article 16 (16.2-2) as of the appropriate date stated therein for each employee who performs work on any two calendar days in any calendar week, regardless of the number of hours worked; provided the employee has been on the Employer's payroll for at least 30 days.

This language measures contributions on the basis of weeks worked and requires a full week's contribution whenever work is performed on more than 1 (one) calendar day. Nothing in this language requires that contributions be made on behalf of or for the benefit of any driver regardless of whether they own their own truck or drive company equipment. The contract language does not promise that the owner-drivers will receive benefits for the contributions. Indeed the record here contains no evidence that the Trustees of the Fund have made any eligibility determinations.

The Court of Appeals has in effect amended the contract and added the terms "on behalf of" or "for the benefit of" where the parties made no such provision.

The contract at issue contains a provision for work preservation and maintenance of economic standards. The Union has obviously attempted to maintain parity between employee drivers and owner-operators in order to ensure that owner-operators are not compensated at lower rates than employees, a circumstance that would motivate the loss of employee jobs.

In attempting to accomplish this, the work of owner-drivers generates payments for fringe benefits on the same basis as those required for employees. According to the Seventh Circuit's opinion such an arrangement is not legal unless the contributions are counted by hours of work. The Court of Appeals completely discounted the fact that payments are not required unless the owner-driver actually works. It also completely ignored the nature of the Trust Funds and significantly narrowed the exception provided by 29 U.S.C. § 186(c)(5) for such payments.

The practical effect of this conclusion is to overrule this Court's opinion in *Walsh v. Schlect*, 429 U.S. 501 (1977), which allowed such contributions to be made when the payments were measured on the basis of work performed by individuals who were not employees of the employer.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH A DECISION OF THE SUPREME COURT AND WITH PRIOR DECISIONS BY THE SEVENTH CIRCUIT

In *Walsh v. Schlect*, 429 U.S. 501 (1977) this Court provided a rule regarding contributions to *Taft-Hartley* Trust Funds required by labor agreements, which included the requirement of such payments for work performed by individuals not covered by a collective bargaining agreement.

The Court found that an employer could not be required to make payments on "behalf of" or "for the benefit of" non-employees. Such payments would not fit the exception to the Labor Management Relations Act as described in Sections 302(c)(5) and (6). If contributions were required to a Trust Fund measured by the work performed by such employees, these contributions fit the exception and were legal.

The Court's opinion was based on the conclusion that payment of such contributions did not violate the congressional purpose which was to prevent bribery and corruption in collective bargaining. The reasoning of the Court was adopted by the Seventh Circuit in *Chicago Painters and Decorators Pension, Health and Welfare and Deferred Savings Plan Trust Funds v. Karr Brothers, Inc.*, 755 F.2d 1285 (7th Cir. 1984). In that case an employer was sued for breaching a contract provision providing that it would not subcontract work. As measure of damages the

District Court awarded a judgment requiring the employer to pay contributions to the Trust Funds in an amount measured by the work performed by the subcontractors. The Seventh Circuit approved that award rejecting the employer's defense that because it had used independent contractors such payments violated the Labor Management Relations Act 29 U.S.C. § 186(c)(1).

The Seventh Circuit again addressed this same issue in *Illinois Conference of Teamsters Welfare Fund v. Mrowicki*, 44 F.3d 451 (7th Cir. 1994). In *Mrowicki* a Trust Fund sought to enforce a contract provision regarding owner-drivers who provided services to the employer. The collective bargaining agreement provisions for owner-drivers in that case are virtually identical to the provisions of the agreement which underlie Petitioner's claim. The Court in that opinion specifically found that:

> It is clear, then, under Article 25 Sec. 12 and 5 of the CBA's, Double M was required to treat as employees any of its owner-operators who owned and operated single trucks, and who were not used as subcontractors pursuant to Article 8, through out the period of 1986-1989 and 1989-1992 CBA's.

Illinois Conference of Teamsters Welfare Funds v. Mrowicki, 44 F.3d 460.

We would point out that the agreement in *Mrowicki* also stated specifically that the employer was required to contribute to the Fund "for each employee covered by said agreement".

After analyzing these provisions, the Seventh Circuit concluded that the Labor Management Relations Act did not prohibit payments measured by the work of the owner-drivers under the contract between the parties in that case and the Court affirmed a judgment ordering payment of contributions. Citing to this Court's opinion in *Walsh v. Schlect* the Seventh Circuit noted that contributions would be barred only if they were made "on behalf of" or "for the benefit of" the owner-drivers. The Court specifically rejected the argument that contributions were barred, noting that the contract at issue provided that contributions would be made for each hour worked by each employee covered by this agreement, including owner-drivers who performed work for the employer.

The Seventh Circuit analysis in the *Mazzei* case is based on the specific finding that contributions can only be legal when they are counted by the hours worked rather than weeks worked. In reaching that conclusion the Court has altered the test in *Walsh v. Schlect* which did not provide that the L.M.R.A. was violated unless an hour based contribution formula was used.

This court has specifically found that contributions of this nature were legal, unless the agreement promised that they were made "on behalf of" or "for the benefit of" non-employees. Nothing in the Court's opinion determined legality based on the contribution formula having as a basis hours rather than weeks.

The Seventh Circuit opinion adds new criteria never provided by this Court, an hourly calculation requirement. In doing so the court has altered the long standing test provided by *Walsh v. Schlect* which focused on the fact that

payments were based on work performed. In this case the owner-drivers actually performed the work covered by the labor agreement, they drove the trucks on two calendar days in a week. A contribution was owed and the contract requirements are virtually indistinguishable from those approved by this Court, and the Seventh Circuit itself in *Illinois Conference of Teamsters v. Mrowicki.*

The Seventh Circuit decision in this case fashions a new test for the legality of payments as allowed by the exception provided by Congress in the Labor Management Relations Act Section 302(c)(5) (29 U.S.C. § 302(c)(5)). Under the test announced by the Court in this case, payments are legal only when the contribution formula is based on the exact hours worked by the employee. If the Union is successful in negotiating a contribution that is more favorable to its members than an hourly contribution that provision is illegal if applied to subcontractors or independent contractors even if it still requires that contributions require a measurement based on the amounts of work actually performed.

Here if the local union would have negotiated a contribution requirement that required payments based on hours rather than weeks, it would have been legal. No basis exists for that requirement in either the statute itself, the legislative history of the statute or the opinions of this Court regarding the interpretation of the statute as long as contributions are made to a jointly trusteed fund established to provide benefits to employees and their families. *United Mine Workers, etc. v. Robinson*, 455 U.S. 562 (1982). The Trust Funds involved in this case meet both of these requirements.

Both the District Court and the Seventh Circuit determined that the owner-drivers were not employees and recognized that their status was not the only factor to be considered in determining whether or not contributions could legally be paid on the basis of the work that they performed. In crafting a requirement that the calculation of the contribution amount must be based on hours worked, and that days worked in a week was not a sufficient criteria, the Seventh Circuit has modified this Court's holding in *Walsh v. Schlect* and added a criteria never considered by this Court or Congress in defining the exception described by the Labor Management Relations Act 302(c)(5).

II.

THE QUESTION PRESENTED IS IMPORTANT

The transportation workplace is increasingly populated by owner-drivers who own their own vehicles and provide delivery of goods and materials. Truck drivers, whether they own their trucks or not, are paid by various formulas that include a percentage of the revenue generated by their trucks or the number of miles that they travel. These formulas do not take into account compensation on the basis of hours worked therefore and there is no reason to require such criteria to measure the legality of contributions to benefit funds. A labor agreement requiring contributions measured on the basis of the weeks rather than the hours that a driver drives his truck is legal. If the drivers are not employees, by equalizing the cost, a Union may motivate an employer to employ drivers and thus protect the work performed by its members. As the Seventh Circuit has noted, if these contributions provide additional benefits for employees and their families, they accomplish the purpose of the multi-

employer plan. This is particularly true with respect to issues of benefit funding faced by Taft-Hartley fund trustees. On the pension side the law requires that pension credits must be awarded even if the contributions required by a contract are not paid by a deliquent employer. Welfare funds increasingly face efforts to increase and extend benefits for participants and their families in the face of relentless inflation in the cost of health care services. *Central States S.E. and S.W. Fund v. Joe McClelland*, 23 F.3d 1256, 1259 (7th Cir. 1994).

Under established law contributions paid to these funds which exist to provide benefits to participants and their families fit the exception to the anti-bribe provisions of the law which the Seventh Circuit declined to apply to the facts contained in this record.

No evidence in this case indicates that the owner-drivers at issue were promised eligibility for benefits and that contributions were made on their behalf with the promise that benefits would be received. The Seventh Circuit has amended the labor agreement at issue and then changed the applicable law in order to reject its own amendment as a violation of the Labor Management Relations Act. The contributions at issue in this case cannot be cast as the types of bribes Congress has outlawed. The application of the test provided by this court in *Walsh v. Schlect* should result in the payment of the contributions sought by the lawsuit in this case.

This issue is important to guide the negotiation of labor agreements by unions and the funding assumptions of trustees who must determine whether to accept contributions which are needed to fund retirement and health care benefits that may be owed in the future. Prior to the Seventh Circuit's

opinion in this case the law applicable to this issue provided a guideline regarding the legality of such contributions. The guideline is no longer clear and the application of the exception to the Labor Management Relations Act has been changed by this decision.

Petitioner respectfully submits that this is an important issue requiring a determination by this Court. If a change in the law is required it should be made by this Court on a question of national labor policy.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AND DECIDED APRIL 6, 2001

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 00-1473

LOU MAZZEI, TRUSTEE OF THE LOCAL 786 BUILDING MATERIAL TEAMSTERS AND HELPERS WELFARE FUND AND LOCAL 786 BUILDING MATERIAL TEAMSTERS AND HELPERS PENSION FUND,

Plaintiff-Appellant,

v.

ROCK-N-AROUND TRUCKING, INC., an Illinois corporation,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 99 C 1975 — **David H. Coar**, *Judge.*

ARGUED OCTOBER 27, 2000 — DECIDED APRIL 6, 2001

Before EASTERBROOK, KANNE, and ROVNER, *Circuit Judges.*

KANNE, *Circuit Judge.* Lou Mazzei, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund

and Local 786 Building Material Teamsters and Helpers Pension Fund ("the Funds"), filed suit against Rock N' Around Trucking ("RNA"), claiming that pursuant to the terms of the collective bargaining agreement (the "CBA") RNA entered into with the International Brotherhood of Teamsters, Local 786 ("Local 786"), RNA owes the Funds $669,030 in contributions on behalf of its owner-drivers. The district court found that the CBA obligates RNA to contribute to the Funds on behalf of its owner-drivers. The court concluded, however, that such contributions would violate section 302 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 186, because RNA's owner-drivers are independent contractors. Therefore, the court granted RNA's motion for summary judgment. Mazzei now appeals the district court's decision. Because we agree with the district court's conclusion that the contributions called for in the CBA are illegal under section 302 of the LMRA, we affirm its decision granting RNA's motion for summary judgment.

I. History

RNA is an Illinois Corporation that provides trucking services to the construction industry. In April 1996, RNA entered into the CBA with the Local 786, a labor union representing truck drivers and yard employees engaged in the processing and delivery of building materials. The controversy in this case centers around what obligation, if any, RNA has, under the terms of the CBA, to contribute to the Funds on behalf of its owner-drivers, those individuals who own and drive their own trucks.

Appendix A

Most of RNA's hauling operations are performed by owner-drivers. These individuals sign "Equipment Leases" with RNA and operate under RNA's license to operate as a motor carrier.[1] The lease term is for three years, though either party may terminate the lease at any time without penalty. Additionally, owner-drivers are free to lease their services to other carriers during this term, and they can refuse to work for RNA for any reason. Owner-drivers working for RNA store and maintain their own trucks, pay for their own gas, pay their own taxes, and provide their own insurance coverage. With regard to compensation, owner-drivers are paid on a Form 1099 basis and receive a gross percentage of the payments RNA receives from its customers, rather than an hourly wage.

An owner-driver who accepts an assignment from RNA is told the location and time of the pick-up and/or delivery of his or her respective load. When an owner-driver accepts an assignment from RNA, that owner-driver is required by Illinois law to place a sign on the side of the truck cab that reads: "Leased To & Operated By Rock N' Around Trucking, Inc." This sign must be covered up or removed, however, whenever an owner-driver is not performing work for RNA

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1. RNA is licensed by the Illinois Commerce Commission (the "ILCC") to operate as a motor carrier. Some of RNA's owner-drivers obtain their own licenses from the Illinois Commerce Commission. These owner-drivers operate under their own licenses and do not sign leases with RNA. The disputed contributions in this case, however, deal only with those "non- certified" owner-drivers working for RNA, and therefore, our references to owner-drivers only include noncertified owner-drivers.

under RNA's ILCC license; and owner-drivers must return these signs along with all other RNA materials at the end of a lease term.

The Funds are multiemployer benefit plans as defined in 29 U.S.C. § 1003(37)(A), and therefore, they are governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). 29 U.S.C. § 1003(a). In the course of auditing employers contributing to the Funds, Local 786 concluded that RNA owed $669,030 in delinquent contributions on behalf of its owner-drivers. Mazzei, a Trustee of the Funds, filed suit in the Northern District of Illinois pursuant to section 502 of ERISA, 29 U.S.C. § 1132, alleging that RNA violated section 515 of ERISA, 29 U.S.C. § 1145, by failing to make contributions required by the CBA on behalf of its owner-drivers. RNA disputed Mazzei's claim, advancing three reasons why it should not be required to make these contributions: (1) the contract language is ambiguous and does not require contributions; (2) the owner-drivers signed waivers of contributions, and thus, none are required; and (3) the owner-operators are independent contractors and not employees, thereby making the contributions illegal. The parties filed cross-motions for summary judgment. The district court granted RNA's motion, finding that although the CBA unambiguously obligates RNA to contribute to the Funds for each of its owner-drivers, the form of contribution called for in the CBA is illegal under section 302 of the LMRA because RNA's owner-drivers are independent contractors. 29 U.S.C. § 186. Mazzei now appeals the court's decision, challenging its determination that the owner-drivers are independent contractors instead of employees and its conclusion that the contributions called for in the CBA violate federal law.

Appendix A

II. Analysis

A. Standard of Review

We review the district court's decision to grant RNA's motion for summary judgment *de novo*. *See Contreras v. Suncast Corp.*, 237 F.3d 756, 759 (7th Cir. 2001). Summary judgment is proper when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). A genuine issue of material fact exists, and summary judgment is improper, if a reasonable jury could return a verdict in favor of the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In making this determination, we review the record in the light most favorable to the non-moving party, in this case Mazzei, drawing all reasonable inferences in his favor. *See Amadio v. Ford Motor Co.*, 238 F.3d 919, 921 (7th Cir. 2001); *see also Liberty Lobby, Inc.*, 477 U.S. at 255.

B. RNA's Obligation to Contribute Under the CBA

Mazzei alleges that RNA's failure to contribute to the Funds on behalf of its owner-drivers violates the terms of the CBA and section 515 of ERISA. Section 515 "requires employers to comply with the terms of their agreements to make contributions to funds," *Cent. States, Southeast &*

Southwest Areas Pension Fund v. Transp. Inc., 183 F.3d 623, 627 (7th Cir. 1999), to the extent that such terms are not inconsistent with the law.[2] *See Cent. States, Southeast & Southwest Areas Pension Fund v. Hartlage Truck Serv., Inc.*, 991 F.2d 1357, 1360 (7th Cir. 1993). Thus, we must first review the language of the CBA and determine whether it obligates RNA to contribute to the Funds on behalf of its owner-drivers. *See Ill. Conference of Teamsters & Employers Welfare Fund v. Mrowicki*, 44 F.3d 451, 458 (7th Cir. 1994).

The district court found that the terms of the CBA unambiguously obligates RNA to contribute to the Funds on behalf of its owner-drivers. *See Mazzei v. Rock-N-Around Trucking, Inc.*, No. 99 C 1975, 2000 WL 152137, *3-5 (N.D. Ill. Feb. 4, 2000). RNA disputes the district court's finding with respect to this issue. Instead, RNA contends that the CBA unambiguously establishes that RNA does not have to contribute to the Funds on behalf of its owner-drivers.

We review the district court's interpretation of the CBA de novo. *See Cent. States, Southeast & Southwest Areas Pension Fund v. Kroger Co.*, 226 F.3d 903, 910 (7th Cir.

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2. Section 515 states:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

29 U.S.C. § 1145.

2000). We will enforce the terms of a collective bargaining agreement if those terms are unambiguous. *See Young v. N. Drury Lane Prods.*, 80 F.3d 203, 205 (7th Cir. 1996). The CBA is unambiguous if it "is susceptible to only one reasonable interpretation." *Moriarty v. Svec*, 164 F.3d 323, 330 (7th Cir. 1998). Furthermore, if we find no ambiguity in the terms of the CBA, then, in determining its meaning as a matter of law, we need not review extrinsic evidence suggesting how those terms should be interpreted. *See Mrowicki*, 44 F.3d at 459.

Article 16 of the CBA, entitled "Health and Welfare and Pension," obligates RNA to contribute "into a trust . . . for the payment of Health and Welfare or Pension benefits . . . for an employee covered by this Agreement." In Article 1, "employee" is defined as "the employee or employees in the classifications of work covered" by the CBA. While this definition does not address whether RNA's owner-drivers are considered covered employees, Article 24, entitled "Owner-Drivers," explains that "Owner-Drivers operating their own vehicles and who are not certified carriers with proper Illinois Commerce Commission authority *are covered within the terms and conditions of this Agreement, including* Union security, hours, wages, overtime, *Health & Welfare and Pension* and working conditions." CBA § 24.1 (emphasis added). Article 24 clearly extends RNA's responsibilities under Article 16, Health and Welfare or Pension, to the terms of employment for RNA's owner-drivers. Therefore, we find that there can be no mistaking the fact that the CBA attempts to impose an obligation on RNA to contribute to the Funds for each of its owner-drivers.

Furthermore, we agree with the district court's determination that this interpretation of the CBA is "straightforward and not inconsistent with other provisions therein." *Mazzei*, 2000 WL 152137, at *5. RNA disagrees, arguing that sections 24.1-4 and 24.3 conflict with our interpretation and demonstrate that the terms of the CBA do not obligate it to contribute to the Funds on behalf of its non-certified owner-drivers. Section 24.1-4 explains that noncertified owner-drivers, the group of individuals at issue in this case

> shall receive the full wages, supplemental allowance, and all working conditions provided in this Agreement and shall receive as a minimum salary after payment of all direct and indirect operating expenses (including contributions to the Health & Welfare Fund and Pension Fund) the sum equal to the amount he would have received for the time he would have worked as an hourly or percentage rated driver.

CBA § 24.1-4. This provision concerns the income of the owner-drivers and tells us nothing about who must contribute to the Funds. Thus, it is not in tension with our finding that 24.1 places the obligation to contribute to the Funds on RNA. Section 24.3, which addresses the terms of employment for a different group of drivers than the owner-drivers at issue in this case, states that

> [c]ompanies who hire owner operators who are members of the Union and are Certified Carriers with proper Illinois Commerce Commission

> authority and who drive their own trucks and perform work exclusively for the Employer shall be covered by Article 16 – Health & Welfare and Pension and it shall be the Employer's responsibility to make contributions on their behalf.

CBA § 24.3. RNA contends that the use of such specific language in defining its duty with respect to the certified owner-operators, in contrast with the lack of such language in section 24.1, is a clear indication that RNA has no such duty with respect to the owner-drivers at issue in this case. We do not agree. While section 24.3 can be read to be a more specific explanation of RNA's obligation to contribute than section 24.1, it does not contradict or detract from the clear directive of 24.1 incorporating RNA's obligations under Article 16 into the terms of employment for the noncertified owner-drivers at issue in this case. Thus, we agree with the district court's conclusion that the CBA unambiguously requires RNA to contribute to the Funds on behalf of its owner-drivers.

C. Legality of the Contributions Called for in the CBA

Having found that the CBA obligates RNA to contribute to the Funds on behalf of its owner-drivers, we must now evaluate the legality of these contributions under the LMRA. When Congress was formulating the LMRA, it was concerned "with corruption of collective bargaining through bribery of employee representatives by employers, with extortion by employee representatives, and with the possible

abuse by union officers of the power which they might achieve if welfare funds were left to their sole control." *Arroyo v. United States*, 359 U.S. 419, 425-26, 79 S. Ct. 864, 3 L. Ed. 2d 915 (1959). To address these concerns, Congress included section 302(a)(1) of the LMRA, which prohibits employers from paying "any representative of any of his employees." 29 U.S.C. § 186(a)(1). However, because Congress had to balance its fears of misuse and bribery with organized labor's demand for a system of employee welfare funds financed by employer contributions and administered by union officials, *see Arroyo*, 359 U.S. at 426, the LMRA provides an exception to this prohibition "with respect to money . . . paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer." 29 U.S.C. § 186(c)(5). This exception is limited, however, as it does not allow an employer to contribute to a trust fund "on behalf of," or "for the benefit of," individuals that are not employees of the contributing employer. *See Ill. Conference of Teamsters & Employers Welfare Fund v. Mrowicki*, 44 F.3d 451, 460 (7th Cir. 1994) (citing *Walsh v. Schlecht*, 429 U.S. 401, 407, 97 S. Ct. 679, 50 L. Ed. 2d 641 (1977)). Nevertheless, in *Walsh v. Schlecht*, 429 U.S. at 407, the Supreme Court held that the LMRA permits employer trust fund contributions, regardless of the employment status of the employer's workers, when the amounts of such contributions are measured by the number of hours worked by that employer's workers as opposed to being given simply "on behalf of" or "for the benefit of" the employer's workers. *Id.*; *see also Mrowicki*, 44 F.3d at 461 (citing *Walsh*, 429 U.S. at 407-10) ("[A] clause in a collective bargaining agreement making an employer liable for payment of trust fund contributions

based on the hours worked at a job site by individuals other than its own employees [does] not violate § 302 of the LMRA."); *Todd v. Benal Concrete Constr. Co.*, 710 F.2d 581, 583 (9th Cir. 1983) (explaining that in *Walsh* the Court "held that contributions may reflect work performed by employees of . . . independent subcontractors, but only if the amounts are 'measured by' the number of hours worked"). Therefore, we will first examine the manner in which the CBA requires RNA to contribute to the Funds to determine if such contributions are permissible regardless of the employment status of RNA's owner-drivers.

Section 16.1 of the CBA obligates RNA to contribute fixed weekly amounts, set out in section 16.2, to a trust "for the payment of Health and Welfare or Pension benefits . . . for an employee covered by this Agreement, in accordance with the requirements set forth in the appropriate Appendix of this Article." Appendix A of the CBA, entitled "Health and Welfare," explains that RNA is required to contribute the amounts called for in section 16.2 to the Welfare Fund "for each employee covered by this Agreement who performs work on any two calendar days in any calendar week, *regardless of the number of hours worked.*" CBA App. A (emphasis added). Similarly, Appendix B, entitled "Pension," requires RNA to contribute to the Pension Fund according to the schedule in section 16.2 "for each employee who performs work on any two days in any calendar week, *regardless of the number of hours worked.*" CBA App. B (emphasis added). Thus, RNA's contributions are to be made "for each employee" when that employee works at least two days of a work week. The measure of these contributions has no relation to the number of hours these individuals

actually work, however, as the amounts are provided for in the CBA. Therefore, this type of contribution is not like the employer contributions the Supreme Court found to be permissible under the LMRA in *Walsh*, which were based on the number of hours worked by the employer's workers. *See Walsh*, 429 U.S. at 407-10.

Because the contributions RNA is required to make under the terms of the CBA are "for each employee," and not like those upheld in *Walsh*, the employment status of RNA's owner-drivers will determine the legality of the contributions under the LMRA. As previously mentioned, employer payments to a trust for the exclusive benefit of that employer's employees are permissible under the LMRA. 29 U.S.C. § 186(c)(5). Thus, if RNA's owner-drivers are employees of RNA, the contributions would fall under this exception and be permissible under the LMRA. If the owner-drivers are independent contractors, however, because the LMRA "excludes any person having the status of independent contractor from the statutory definition of 'employee,' " *Mrowicki*, 44 F.3d at 460, then any RNA contribution to the Funds on behalf of the owner-drivers would violate section 302 of the LMRA. Thus, we must determine whether these owner-drivers are employees of RNA.

D. The Employment Status of RNA's Owner-Drivers

In *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 112 S. Ct. 1344, 117 L. Ed. 2d 581 (1992), the Supreme Court adopted "a common-law test for determining who

qualifies as an 'employee' under ERISA." *Id.* at 323. While the Court listed twelve factors to be considered when making this determination, it noted that the common law test had "no shorthand formula or magic phrase that can be applied to find the answer," and that "all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Id.* at 324 (citations omitted). Prior to the Court's decision in *Darden*, we applied our own five factor analysis to determine an individual's employment status. *See Knight v. United Farm Bureau Mut. Ins.*, 950 F.2d 377, 378-79 (7th Cir. 1991). Like the Supreme Court's approach in *Darden*, our analysis recognizes that " '[o]f several factors to be considered, the employer's right to control is the most important when determining whether an individual is an employee or an independent contractor.' " *Compare EEOC v. N. Knox Sch. Corp.*, 154 F.3d 744, 747 (7th Cir. 1998) (quoting *Knight*, 950 F.2d at 378) *with Darden*, 503 U.S. at 323 ("In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished.") (citations omitted). Since *Darden*, we have concluded that the factors described by the Court in that decision are adequately subsumed within our five-factor analysis. *See Alexander v. Rush N. Shore Med. Ctr.*, 101 F.3d 487, 492 n.1 (7th Cir. 1996). Therefore, we will determine the employment status of RNA's owner-drivers within the framework of our *Knight* analysis.

In evaluating the employment status of RNA's owner-drivers, we must examine the following factors:

> (1) the extent of the employer's control and supervision over the worker, including directions on scheduling and performance of work, (2) the kind of occupation and nature of skill required, including whether skills are obtained in the workplace, (3) responsibility for the costs of operation, such as equipment, supplies, fees, licenses, workplace, and maintenance of operations, (4) method and form of payment and benefits, and (5) length of job commitment and/or expectations.

Knight, 950 F.2d at 378-79. When a district court uses our five-factor analysis to determine an individual's employment status, we review that court's factual determinations for clear error. *See Aberman v. J. Abouchar & Sons, Inc.*, 160 F.3d 1148, 1150 (7th Cir. 1998); *see also Ost v. W. Suburban Travelers Limousine*, 88 F.3d 435, 438 (7th Cir. 1996). Because our analysis subsumes the factors set out in *Darden*, *see N. Knox Sch. Corp.*, 154 F.3d at 747, we will also review the factual determinations made by the district court using the Supreme Court's approach in *Darden* for clear error.

Applying the first factor of our analysis, "the extent of the employer's control and supervision over the worker, including directions on scheduling and performance of work," it is clear that RNA exerted very little control or supervision over its owner-drivers. Mazzei disagrees, contending that RNA's ability to tell owner-drivers where and when to pick up and/or deliver a load of materials is an indication of significant control. Although Mazzei accurately describes RNA's ability to instruct owner-drivers who accept an assignment from RNA, the control RNA exercises over

its owner-drivers amounts to little more than the basic level of supervision required to ensure that the arrangement between RNA and its owner-drivers is of some value to RNA. Additionally, other facts further exhibit the minimal amount of control RNA exercises over its owner-drivers. First, these individuals own and drive their own trucks. Second, although owner-drivers sign a lease with RNA for a period of three years, they can refuse to work for RNA at any time and for any reason, they can work for other companies at any time, and they can terminate the lease with RNA at any time and for any reason without penalty. In this respect, RNA's owner-drivers are similar to the limousine drivers that we found to be independent contractors in *Ost v. W. Suburban Travelers Limousine*, 88 F.3d 435 (7th Cir. 1996). The drivers in *Ost*, like RNA's owner-drivers, "supplied their own vehicles," and "were able to choose to work whatever days they preferred, . . . were free to refuse any assignments they wished . . . and could work for dispatching services other than West Suburban." *Id.* at 438. We held that "each of these facts indicates that the manner in which the drivers performed their services for West Suburban was primarily within their own control." *Id.* Thus, the control RNA exercises over its owner-drivers, or the lack thereof, is consistent with that found in an employer-independent contractor relationship.

We have found that the second factor, "the kind of occupation and nature of skill required, including whether skills are obtained in the workplace," favors "a finding of neither independent contractor nor employee" when dealing with individuals similar to RNA's owner-drivers "because professional drivers . . . could be either employees or independent contractors." *N. Knox Sch. Corp.*, 154 F.3d at 749.

In terms of our third factor, "responsibility for the costs of operation, such as equipment, supplies, fees, licenses, workplace, and maintenance of operations," the facts of this case indicate that RNA's owner-drivers are independent contractors. In addition to owning and driving their own trucks, owner-drivers provide storage for their trucks, are responsible for the maintenance of their trucks, pay for their own gas, and pay for their trucks to be insured. RNA's owner-drivers are in this respect, therefore, very much like the school bus drivers we found to be independent contractors in *North Knox School Corp.*, 154 F.3d at 751. The bus drivers in *North Knox*, like RNA's owner-drivers, "were required to supply their own buses and absorb all costs such as insurance and maintenance." *Id.* at 749. We found these facts to be "a strong indication that the drivers were independent contractors." *Id.*

The fourth factor of our analysis, "the method and form of payment and benefits," also suggests that RNA's owner-drivers are independent contractors. The owner-drivers are paid on a Form 1099 basis, which Mazzei acknowledges in his brief is designated as non-employee compensation, and which we have held "would be appropriate for independent contractors." *N. Knox Sch. Corp.*, 154 F.3d at 750. Additionally, the owner-drivers pay their own taxes and receive a gross percentage of the money paid to RNA by its clients as opposed to receiving an hourly wage.

Finally, "the length of job commitment and/or expectations," also implies that RNA's owner-drivers are independent contractors. As we mentioned earlier in examining the extent of RNA's control over its owner-

drivers, these individuals each sign an Equipment Lease with RNA for a period of three years. However, being able to: (1) cancel the lease at any time and for any reason without penalty; (2) work whenever he or she wants; and (3) work for whomever he or she wants, can hardly be characterized as the type of commitment consistent with that of an employer-employee relationship.

In arguing that the owner-drivers are employees, Mazzei draws our attention to several sections of the CBA that treat the owner-drivers as employees of RNA. Specifically, Mazzei points to language in the contract stating that RNA's owner-drivers are to receive overtime, vacation, and holiday pay, and that they will have set starting times and hours of work. Mazzei contends that independent contractors do not receive these types of benefits, and that these factors, combined with RNA's ability to instruct those owner-drivers who accept assignments from RNA, demonstrate that the owner-drivers are employees. We find this argument to be unpersuasive. "Contractual language alone cannot transform a contractor/independent contractor relationship into an employer/employee relationship." *Todd v. Benal Concrete Constr. Co.*, 710 F.2d 581, 584 (9th Cir. 1983). To determine the employment status of an individual or group, we must, as we have in this case, evaluate the actual employment relationship. We have already explained that the control exercised by RNA over its owner-drivers is minimal. Additionally, Mazzei presents no evidence that RNA's owner-drivers have received any of the payments mentioned in the sections of the CBA he asks us to review. Without more, and based on our above analysis, we conclude that the owner-drivers working for RNA are independent contractors

Appendix A

Given our determination that RNA's owner-drivers are independent contractors, the present case bares a striking similarity to the Ninth Circuit's decision in *Todd v. Benal Concrete Construction Co.*, 710 F.2d 581. In *Benal*, the terms of a collective bargaining agreement explained that when individuals referred to as owner-operators performed work for Benal that was covered by the terms of the agreement, those individuals "shall become employees." *Id.* at 582. The practical effect of this language was that Benal would thereafter be obligated to contribute "on behalf of" these owner-operators to local union trust funds. Reviewing not only the language of the contract, but also the actual working relationship between Benal and the owner-operators, the court determined that the owner-operators were independent contractors. Because the contributions Benal was obligated to make were not based on the hours worked by these non-employees, like the contributions upheld in *Walsh*, but instead were to be made "on behalf of" the owner-operators, the court concluded that Benal could not be required to make these contributions, as they would violate section 302 of the LMRA. *See id.* at 584.

Like Benal, RNA cannot be required to contribute to the Funds for each of the owner-drivers, whom we have determined are independent contractors, when those contributions are not based on the number of hours worked. Therefore, we agree with the district court's conclusion that while the terms of the CBA require RNA to contribute to the Funds on behalf of its owner-drivers, the manner in which these contributions are called for violates the LMRA because the owner-drivers are independent contractors.

Appendix A

III. Conclusion

For the reasons stated above, we AFFIRM the district court's decision to grant RNA's motion for summary judgment.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B — MEMORANDUM OPINION AND ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED FEBRUARY 1, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 99C 1975

HONORABLE DAVID H. COAR

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund,

Plaintiff,

v.

ROCK-N-AROUND TRUCKING, INC.,
an Illinois Corporation,

Defendant.

MEMORANDUM OPINION AND ORDER

Lou Mazzei, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund ("the Funds") filed suit against Rock N' Around Trucking, Inc., ("RNA") pursuant to the Employee Retirement Income Security Act

of 1974, as amended ("ERISA"). The Funds allege that RNA failed to make contributions of $669,030 on behalf of owner-drivers who worked for RNA. Two motions are before this Court: RNA's motion for summary judgment and the Funds' cross-motion for summary judgement. For the reasons discussed below, RNA's motion is granted and the Funds' motion is denied.

I. Factual Background

The Funds are multi-employer benefit plans governed by ERISA. 29 U.S.C. § 1002(3), (37). RNA provides trucking services to the construction industry. In April 1996, RNA entered into a collective bargaining agreement ("CBA") with the International Brotherhood of Teamsters, Local 786 ("Local 786"). The underlying dispute in this case centers on RNA's failure, in contravention to its alleged obligation under the CBA, to contribute to the Funds on behalf of owner-drivers.

The majority of RNA's hauling operations are performed by owner-drivers. Owner-drivers, or owner-operators, own their own trucks and drive their own vehicles. They sign leases with RNA to work for a set term of three years, but the lease may be terminated at will by either party without penalty. Owner-drivers are free to lease their services to other carriers during the term of their RNA lease, and they can and do refuse to work for RNA for any reason. It is undisputed that owner-drivers own their own trucks, provide for storage of their own trucks, take responsibility for maintenance of the trucks, pay for their own gas, pay their own taxes, and provide their own insurance coverage. Owner-

drivers are paid on a Form 1099 basis and do not receive an hourly wage; rather, they are paid a gross percentage of the amount paid to RNA by its customers. Owner-drivers also sign independent contractor agreements with RNA.

RNA directs owner-drivers who accept assignments to the location and time of the pickup and/or delivery of his load. When owner-drivers lease their services to RNA and operate under RNA's certificate of authority, they are provided with signs to be placed on the side of their truck cab. The sign reads: "Leased To & Operated By Rock N' Around Trucking, Inc." When leased owner-operators are not performing work for RNA under RNA's ILCC license, the signs are to be removed or covered up. The signs, and other RNA materials are returned to RNA at the end of a lease term.

Local 786, in the course of auditing employers contributing to the Funds, found that RNA owed $669,030 in delinquent contributions for the period May 15, 1999 through April 30, 1999. Twenty-two of the owner-drivers for whom contribution is sought, were, at all relevant times, members of Local 786 who had entered into CBA's with Local 786 and had leased their services as well as their trucks to RNA. The remaining owner-drivers on whose behalf the Funds seek contributions constitute members of Local 731.[1] None of the owner-drivers work under the authority of their own ILCC certificates; thus, to be exact, the Funds seek contributions on behalf of non-certified owner-drivers.

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1. RNA operates a "split barn," whereby drivers belong to either Local 786 or Local 731.

Appendix B

II. Summary Judgment Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Cox v. Acme Health Serv., Inc.*, 55 F.3d 1304, 1308 (7th Cir. 1995). A genuine issue of material fact exists for trial when, in viewing the record and all reasonable inferences drawn from it in a light most favorable to the non-movant, a reasonable jury could return a verdict for the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986); *Eiland v. Trinity Hosp.*, 150 F.3d 747, 750 (7th Cir. 1998).

The movant bears the burden of establishing that there exists no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986); *Hedberg v. Indiana Bell Tel. Co.*, 47 F.3d 928, 931 (7th Cir. 1995). If the movant meets this burden, the non-movant must set forth specific facts that demonstrate the existence of a genuine issue for trial. Rule 56(e); *Celotex*, 477 U.S. at 324, 106 S. Ct. at 2553. Rule 56(c) mandates the entry of summary judgment against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and in which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322, 106 S. Ct. at 2552-53. A scintilla of evidence in support of the non-movant's position is not sufficient to oppose successfully a summary judgment motion; "there must be evidence on which the jury could reasonably find for the

[non-movant]." *Anderson*, 477 U.S. at 250, 106 S. Ct. at 2511. Weighing evidence, determining credibility, and drawing reasonable inferences are jury functions, not those of a judge deciding a motion for summary judgment. *Anderson*, 477 U.S. at 255, 106 S. Ct. at 2515.

III. Analysis

Collective Bargaining Agreement

The Funds bring this suit pursuant to § 502 of ERISA, which empowers plaintiffs to bring civil actions to enforce other provisions of ERISA. 29 U.S.C. § 1132. The Funds maintain that RNA violated § 515 of ERISA by failing to make required contributions. Section 515 provides:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms to the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement. 29 U.S.C. § 1145.

Collective bargaining agreements establish an employer's obligation to pension and welfare funds. *Central States, S.E. and S.W. Areas Pension Fund v. Kroger Co.*, 73 F.3d 727, 730 (7th Cir. 1996). Thus, the CBA takes center stage in this dispute. Summary judgement is particularly appropriate when a dispute concerns an interpretation of a written contract. *Beverage Indus. Local No. 744 Health and*

Welfare Fund v. Quality Beers Ltd. Partnership, 58 F. Supp. 2d 910, 913 (N.D. Ill. 1999) (citing *ICEBU v. Hyster-Yale Materials Handling, Inc.*, 83 F.3d 930, 923-33 (7th Cir. 1996). Where the language of an agreement is unambiguous, its meaning may be determined as a matter of law. *Illinois Conference of Teamsters and Employers Welfare Fund v. Mrowicki*, 44 F.3d 451, 478 (7th Cir. 1994). *See also Young v. North Drury Lane Prod., Inc.*, 80 F.3d 203, 205 (7th Cir. 1996) (noting that the courts "must enforce the terms of a collective bargaining agreement when those terms are unambiguous"). In other words, where the language is clear and thereby susceptible to only one reasonable interpretation, the issue need not be resolved by a trier of fact. *Mrowicki*, 73 F.3d at 732.

In examining ERISA claims, the courts apply federal common law rules of interpretation. *Kroger*, 73 F.3d at 731. The courts look to the plain text of an agreement and assess an agreement in its entirety. *Id.* at 731, 732; *Mrowicki*, 44 F.3d at 458. A cardinal principle of contract construction, and one extended to CBA interpretation, is that "a document should be read to give effect to all of its provisions and to render them consistent with each other." *Quality Beers*, 58 F. Supp. at 914 (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63, 115 S. Ct. 1212 (1995)). Accordingly, a CBA should be interpreted so as to reconcile all of the provisions therein and avoid "inconsistencies and redundancies in the language of the agreement." *Id.*; *Mrowicki*, 44 F.3d at 459.

This Court looks initially to the language of the CBA to determine the extent of RNA's obligation to make

contributions to the Funds. *Mrowicki*, 44 F.3d at 458. Article 16 of the CBA, titled Health and Welfare and Pension, requires RNA to contribute into a trust for the payment of health and welfare pension benefits for "employee[s] covered by this Agreement." *See* CBA § 16.1. Article 1 then defines the term employee as "the employee or employees in the classifications of work covered" by the CBA. CBA Art 1. The controversy at hand could be easily settled if owner-drivers could be deemed "employees" under Article 16. Yet the definition enunciated in Article 1 does not provide much, if any, guidance in determining whether owner-drivers are encompassed by this definition.

In fact, owner-drivers are governed by a separate Article pertaining only to them, namely Article 24 titled "Owners-Drivers," which tends to suggest that they are classified into a distinct category separate and apart from employees.[2] Section 24.1 of the CBA reads, in relevant part:

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2. Nor do owner-drivers tend to qualify as employees under the plain meaning of the term. *See Moriarty v. Svec*, 164 F.3d 323, 330 (7th Cir. 1998) (defining "employee" in a CBA by first examining its "ordinary and popular" meaning). "Employee" is ordinarily defined as "one employed by another," which generally "exclude[s] those who work for themselves." *Id.* at 331. Here, RNA presents substantial uncontroverted evidence that indicates that owner-drivers are in fact independent contractors on account of their "leased" status, which gives them a right to provide their services to RNA or any other employer at any time, work for multiple employers at the same time, and accept or decline work assignments from RNA for any reason. That owner-drivers may not be entitled to have RNA make contributions to the Funds on their behalf under the provisions of Article 16, however, does not mean that RNA is not obliged to make such contributions.

Appendix B

> Owner-Drivers operating their own vehicles and who are not certified carriers with proper Illinois Commerce Commission authority [thus, "non-certified owner-drivers"] are *covered within the terms and conditions of this Agreement, including* Union security, hours, wages, overtime, *Health & Welfare and Pension* and working conditions. [emphasis supplied]

This provision, by expressly incorporating Article 16 ("Health and Welfare and Pension"), extends the rights granted to employees onto owner-drivers. In other words, pursuant to § 24.1, RNA must remit payment to the Funds on behalf of owner-drivers in accordance with the provisions set forth in Article 16. The text at issue is subject to only one reasonable interpretation and is therefore conclusive as a matter of law.[3] *Mrowicki*, 44 F.3d at 459.

The Court's construction of the CBA is straightforward and not inconsistent with the other provisions therein. *See id.* For instance, § 24.1-4 provides, also with respect to non-certified owner-drivers:

> Such Owner-Drivers shall receive the full wages, supplemental allowance, and all working conditions provided in this Agreement and shall receive as a minimum salary after payment of all

3. Since there is no ambiguity in the language of the CBA, the Court need not consider, for purposes of construing the CBA, extrinsic evidence relating to the parties' understandings of and practices under the terms of the agreement. *Mrowicki*, 44 F.3d at 459.

> direct and indirect operating expenses (including contributions to the Health & Welfare Fund and Pension Fund) the sum equal to the amount he would have received for the time he would have worked as an hourly or percentage rated driver.

Section 24.1-4 speaks only to the *amount* of net income owed to non-certified owner-drivers. It remains completely silent with regard to which party, the driver or RNA, is obligated to contribute to the Fund on behalf of the driver. Therefore, imputing upon RNA the responsibility of contributing to the Funds does not render any of the provisions of the CBA inconsistent or superfluous. *See Mrowicki*, 44 F.3d at 459.

Furthermore, § 24.3, which refers to certified owner-drivers (distinct from the non-certified owner-drivers on whose behalf the Funds seek contributions), does not undermine this Court's determination. Section 24.3 states:

> Companies who hire owner operators who are members of the Union and are Certified Carriers with proper Illinois Commerce Commission authority and who drive their own trucks and perform work exclusively for the Employer shall be covered by Article 16 — Health & Welfare and Pension and it shall be the Employer's responsibility to make contributions on their behalf.

Indeed, § 24.3 expressly directs RNA to remit payments to the Funds on behalf of certified owner-drivers. Particularly in light of its placement only three paragraphs below § 24.1-4, § 24.3's specific language seems to suggest that § 24.1, with

its less direct language, should be construed so as to discharge RNA of its obligation to the Funds, argues RNA. Yet § 24.1 is clear in imposing upon RNA the obligations set forth in Article 16. See CBA § 24.1 (providing that non-certified owner-drivers are "covered within the terms and conditions of this Agreement, including . . . Health & Welfare and Pension"); Art. 16 (directing employers to contribute to the Funds on behalf of their workers). Therefore § 24.3, which concerns a different category of drivers than the non-certified drivers at issue, is not inconsistent with, nor does it render superfluous this Court's interpretation of § 24.1.

This Court's decision is wholly supported by the Seventh Circuit's decision in *Mrowicki.* 44 F.3d 451. The CBA under scrutiny in that case provided that the "owner-driver shall be carried on the payroll of the Employer as an employee and as such, all the terms and conditions of this Agreement . . . shall be applicable to him." *Id.* at 454 n.6. The CBA also required the employer to contribute a specified amount for each hour worked by an employee. Examining the CBA in its entirety, the Seventh Circuit held that the unambiguous language required the employer to make contributions to the funds in an amount measured by the number of hours worked by the owner-drivers. 44 F.3d at 458-59. Admittedly, the language of the CBA at issue in *Mrowicki* expressly equated owner-drivers with employees, whereas that same language is absent from the CBA in the present case. Yet that distinction is not fatal to this Court's determination in the instant case. The critical language, common to both CBAs, provides that the terms and conditions of the respective CBAs are applicable to the owner-drivers. In effect, this language affords owner-drivers in both cases the status of employee. 44 F.3d at 458.

Appendix B

In summary, the plain meaning of § 24.1 establishes that RNA must make contributions to the Funds on behalf of owner-drivers in accordance with the provisions articulated in Article 16. Yet in the final analysis, the Court's construction of the CBA turns out to be a hollow victory for the Funds.

Labor Management Relations Act

Section 302(a)(1) of the Labor Management Relations Act ("LMRA") prohibits payments by employers to "any representative of any of his employees." 29 U.S.C. § 186(a)(1). The LMRA goes on to delineate exceptions for payments made to trust funds established "for the sole and exclusive benefit of the employees of such employer" for the purpose of providing, inter alia, medical care and pensions. 29 U.S.C. § 186(c)(5). Therefore, the LMRA makes illegal "payments by employers to employee trust funds on behalf of, or for the benefit of, anyone ineligible to receive benefits from those funds." *Mrowicki*, 44 F.3d at 460 (citing *Walsh v. Schlecht*, 429 U.S. 401, 407, 97 S. Ct. 679, 684 (1977)). In contrast, § 302 authorizes an employer to pay contributions to funds measured by the hours worked by individuals, even if they are otherwise ineligible to receive benefits from the funds. 44 F.3d at 461 (summarizing the Supreme Court's ruling in *Walsh*).

Here, the CBA requires RNA to "contribute into a trust . . . for the payment of Health and Welfare or Pension benefits . . . the amounts shown . . . per week for an employee covered by this Agreement in accordance with the requirements set forth in the appropriate Appendix of this Article." CBA

§ 16.1. Appendix A, in turn, provides that RNA shall contribute to the Funds "for each employee covered by this Agreement who performs work on any two calendar days in any calendar week, regardless of the number of hours worked." CBA, § A.1. Under the express terms of the CBA, then, RNA is obligated to remit lump-sum contributions to the Funds for its employees instead of making payments on the basis of hours worked. By divorcing the measure of employer contributions from the number of hours worked, the provisions set forth in this CBA fall outside the scope of employer obligations authorized by § 302 as set forth in *Walsh* and its progeny. 429 U.S. at 410 (holding that an employer's payment of contributions measured by the hours worked by employees ineligible to benefit from the fund comports with § 302). *See, e.g.*, *Mrowicki*, 44 F.3d at 454, 461 (finding no violation of the LMRA where employer agreed under CBA to "contribute to [the Fund a specified dollar amount] for each hour worked by each employee"); *Todd v. Benal Concrete Constr. Co.*, 710 F.2d 581, 584 (9th Cir. 1983) (finding that § 302 proscribes payments made on behalf of owner-operators); *Brogan v. Swanson Painting Co.*, 682 F.2d 807, 809 (9th Cir. 1982) (enforcing a CBA provision requiring contributions measured by number of hours worked).

That the contributions sought in this case are not measured by the number of hours worked, however, does not necessarily mean that the contributions are barred by § 302. Indeed, the language of the CBA at issue makes clear that payments are sought for the benefit of employees, but that is still within the bounds of § 302 as long as the individuals for whom the contributions are sought are eligible to receive benefits from the Funds as employees of RNA.

Both parties have made unsupported assertions in their respective memoranda of law about whether owner-drivers are eligible beneficiaries of the Funds.[4] Yet the Court need not resolve that issue because even if owner-drivers could participate in the Funds, they could not participate *as employees of RNA*. This distinction is important because an employers' contributions to trust funds, in order to fall within the exceptions delineated in the LMRA, must be for the benefit of the "employees of [the] employer." 29 U.S.C. § 186(c)(5).

In the instant case, owner-drivers are independent contractors and are therefore precluded from the LMRA's definition of "employee." *Mrowicki*, 44 F.3d at 460. Common law agency principles articulated in *Nationwide Mutual Insurance Company v. Darden* are used to determine whether an individual constitutes an employee under the LMRA. 503 U.S. 318, 323-24, 112 S. Ct. 1344, 1348-49 (1992); 44 F.3d at 460.[5] In determining whether a hired party is an employee,

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4. *See, e.g.*, Def. Memo, in S.J. at 12 (owner-drivers not eligible to participate in the Funds); Def.'s Resp. in Cross-Mot. at 7 (same); Pl. Resp. in Cross-Mot. at 9 (owner-drivers qualify for benefits from trust fund); Pl. Reply in Cross-Mot. at 5 ("The fund trustees have never taken the position that these owner-drivers are not eligible [to benefit from the Funds]").

5. In *Mrowicki*, the court deemed irrelevant the employment status of individuals under the common law where an employer's obligation to make payments to a fund was measured by the number of hours worked. 44 F.3d at 462. As discussed previously, the CBA at issue in this case does not compel contributions on an hourly basis. Therefore, a determination of the status of owner-drivers under common law principles, even if unnecessary for establishing the legality of an employer's obligation to contribute on an hourly basis, becomes relevant to an analysis of the instant case.

the courts must consider "the hiring party's right to control the manner and means by which the product is accomplished."[6] 503 U.S. at 322, 112 S. Ct. at 1348. "[A]ll the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Id.*

An examination of the relationship between owner-drivers and RNA indicates that owner-drivers take charge of the manner and means of their own work. Conversely, RNA has extremely limited control over owner-drivers. Owner-drivers sign leases with RNA to work for a set term of three years, but the lease may be terminated at will by either party without penalty. Owner-drivers are free to lease their services to other carriers during the term of their RNA lease, and they can and do refuse to work for RNA for any reason. It is further undisputed that owner-drivers own their own trucks, provide for storage of their own trucks, take responsibility for maintenance of the trucks, pay for their own gas, pay their own taxes, and provide their own

---

6. The Supreme Court announced the following factors relevant to the inquiry:

> the source of instrumentalities and tools; the location of the work; the duration of the relationship between parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. 503 U.S. at 322, 112 S. Ct. at 1348.

insurance coverage. Owner-drivers are paid on a Form 1099 basis and do not receive an hourly wage; rather, they are paid a gross percentage of the amount paid to RNA by its customers. Owner-drivers also sign independent contractor agreements with RNA.

RNA directs owner-drivers who accept assignments to the location and time of the pickup and/or delivery of a load. When owner-drivers lease their services to RNA and operate under RNA's certificate of authority, they are provided with signs to be placed on the side of their truck cab. The sign reads: "Leased To & Operated By Rock N' Around Trucking, Inc." Even if the last two considerations — namely, RNA's ability to tell owner-drivers when and where an assignment will take place as well as the signs posted on the trucks during assignments weigh in on the side of qualifying owner-drivers as employees, these factors cannot and do not overcome the wealth of evidence that tip the scale in favor of qualifying them as independent contractors.

The totality of the circumstances dictate that owner-drivers are indeed independent contractors. Consequently, RNA cannot contribute to the Funds on behalf of owner-drivers under § 302 of the LMRA. *See Todd*, 710 F.2d at 583-84 (finding that an employer could not be required to make trust contributions on behalf of owner-operators because, in light of the substantive nature of their relationship with their "employer," owner-operators could not be transformed by contractual language to employees for the purpose of § 302); *Joint Council of Teamsters No. 42, Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Assoc. General Contractors of*

California, Inc., 520 F. Supp. 3, 4 (C.D. Cal. 1980), *aff'd*, 662 F.2d 531 (9th Cir. 1981) ("[O]wner-operators are not employees within the meaning of § 302 of the LMRA and [ ] contributions by Employers to plaintiffs' trust fund on their behalf is illegal.")

IV. Conclusion

For the foregoing reasons, RNA's motion for summary judgment is GRANTED. The Funds' cross-motion for summary judgment is accordingly DENIED as moot. This case is CLOSED.

Enter:

s/ David H. Coar
David H. Coar
United States District Judge

Dated: February 1, 2000

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number 99 C 1975

Lou Mazzei

v.

Rock-N-Around Trucking

JUDGMENT IN A CIVIL CASE

* * *

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that The Defendant's Motion for Summary Judgment is Granted. The Funds' Cross Motion for Summary Judgment is accordingly Denied as Moot.

Summary Judgment is hereby entered in favor of the defendant Rock-N-Around Trucking, Inc. and against the plaintiff, Lou Mazzei, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund. There being no further matters before this Court, this case is closed.

Appendix B

Michael W. Dobbins,
Clerk of Court

Date: 2/1/2000

s/ Patricia McQurter-Figgs
Patricia McQurter-Figgs,
Deputy Clerk

(2)

Supreme Court, U.S.
FILED
JUL 27 2001
CLERK

No. 01-06

In The

Supreme Court of the United States

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund,

Petitioner,

v.

ROCK-N-AROUND TRUCKING, INC., an Illinois corporation,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The Parties to this Proceeding are those named in the Caption of this case and identified in Petitioner's brief. Respondent Rock-N-Around Trucking, Inc. ("RNA") is an Illinois corporation. It has no parent company and no publicly held company owns any of RNA's stock.

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REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is whether the provisions of a collective bargaining agreement ("CBA") requiring contributions to be made to Taft-Hartley Fringe Benefit Funds "based on work . . . actually performed by owner-operators, who are not employees, violates 302(a)(1) of the Labor Management Relations Act, (29 U.S.C.A § 186(a)(1))," Pet. at *i*. Petitioner argues that the Seventh Circuit's opinion conflicts with this Court's decision in *Walsh v. Schlect*, 429 U.S. 401, 97 S.Ct. 679, 50 L.Ed.2d 641 (1977) as well as the Seventh Circuit's own prior decision in *Illinois Conference of Teamsters Welfare Fund v. Mrowicki*, 44 F.3d 451 (7th Cir. 1994), which would both permit payment of monies into such Trust Funds when measured by the work performed by such owner-operators, Pet. at 9-13.

According to Petitioner, the Seventh Circuit's opinion here effectively amends the parties' contract and drastically alters the test for measuring the legality of Trust Fund contributions made for work performed by non-employees, set forth in *Walsh* and its progeny. Petitioner argues that this case is important as a matter of national labor policy because employers and unions need new guidance in crafting provisions that will satisfy the criteria of § 302 for determining the legality of payments made to jointly trusteed Trust Funds for work performed by non-employees, Pet. at 13-15.

Petitioner's claims are unfounded. Neither the Seventh Circuit's decision, nor the record below, raise the question presented by the Petition. Indeed, the Petitioner has waived his argument that the CBA provision at issue

here is lawful because it only requires contributions to be made based on the work performed by non-employee owner-drivers.

Moreover, the Seventh Circuit's ruling is not in conflict with this Court's *Walsh* decision, or the Seventh Circuit's own *Mrowicki* decision, and is supported unanimously by decisions of other Circuit Courts of Appeal which have applied the teaching of *Walsh* to conclude that contract provisions requiring that contributions be made to Taft-Hartley Funds *for* independent contractors (as were sought here) are illegal and unenforceable under LMRA § 302, 29 U.S.C. § 186. Thus, the clear guidelines which Petitioner concedes have been in place since *Walsh* (Pet. at 14-15) are still in place and remain unchanged. This case, in other words, presents no change in or departure from established law and is not important for the future of labor-management collective bargaining. The Petition should be denied.

I.

THE DECISION BELOW DOES NOT RAISE THE QUESTION PRESENTED BY THE PETITION

As it relates to this Petition, the Seventh Circuit decided three issues: (1) that the owner-drivers used by RNA are independent contractors rather than employees; (2) that the terms of the parties' CBA obligated RNA to contribute to the Funds *for* RNA's owner-drivers; and (3) that such contributions, if made, would be illegal under LMRA § 302. Yet, in reaching that last determination (which is the only one for which Petitioner seeks review) the Seventh Circuit did *not* simply opine that in order for

such contributions to be lawfully made they must always be "counted by hours of work" performed by the non-employees, as Petitioner contends, Pet. at 8. Instead, the Seventh Circuit analyzed Article 16 of the CBA, which requires Trust Fund contributions "*for* an employee covered by the Agreement" (Pet., App. A at 7a); and Article 24.1, which "clearly extends RNA's responsibilities under Article 16 . . . to the terms of employment for RNA's owner-drivers" (*Id.*); and then concluded "that there can be no mistaking the fact that the CBA attempts to impose an obligation on RNA to contribute to the Funds *for* each of its owner-drivers," *Id.* (emphasis added). However, because those owner-drivers were independent contractors (not employees), the court further concluded that RNA could not lawfully make such contributions *for* those independent contractors under the CBA, just exactly as the Ninth Circuit had concluded in *Todd v. Benal Concrete Co., Inc.*, 710 F.2d 581 (9th Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984), and consistent with this Court's decision in *Walsh*, Pet., App. A at 18A.

In short, this case does not even raise the "question presented" by Petitioner, because the Seventh Circuit did *not* decide that contributions to Taft-Hartley Funds based on the performance of covered work by non-employee owner-operators were unlawful.[1] Rather, the court

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[1] It should be noted in this regard that Petitioner likewise misstates the holding of the District Court, asserting that the District Court "found that the contract language did require contributions *based on the weeks worked by the owner-drivers*", Pet. at 5 (emphasis added). In fact, the District Court found that the CBA required RNA to "remit payment to the Funds *on behalf of owner-drivers in accordance with the provisions set forth in Article*

decided that the CBA's provision requiring Trust Fund contributions *for* non-employees was unlawful and unenforceable. It did not, in other words, decide the case in the manner phrased by Petitioner's "question presented," nor did it pronounce generally that Taft-Hartley contributions in connection with work performed by non-employees are always illegal "unless . . . counted by hours of work," as Petitioner contends, Pet. at 8. It simply held that requiring such contributions *for* independent contractors is not permitted by LMRA § 302. That holding was proper in all respects and does not call for review by this Court.

II.

THE RECORD BELOW REFLECTS THAT PETITIONER HAS WAIVED HIS ARGUMENT THAT THE CBA LAWFULLY REQUIRES CONTRIBUTIONS TO BE MADE MEASURED BY THE WORK PERFORMED BY THE OWNER-DRIVERS

The crux of the Petition is that the CBA provisions found unlawful here only require contributions to be made "based on the work performed" by independent owner-drivers, and not "for the benefit of" or "on behalf

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16" (Pet., App. B at 27a, emphasis added), and that "the plain meaning of [the CBA] establishes that RNA must make contributions *on behalf of owner-drivers in accordance with the provisions articulated in Article 16*", Pet., App. B at 30a, (emphasis added). Thus, it is Article 16 which controls, and because that article required payments to the Funds "*for* each employee covered by this Agreement" the District Court, and subsequently the Seventh Circuit, properly found that such contributions when made *for* owner-drivers would violate § 302.

of" those owner-drivers, Pet. at 7. Yet, the record below reflects that Petitioner unequivocally pursued this case before the District Court, and filed his summary judgment motion, on the theory that the CBA required contributions to be made to the Funds *on behalf of* RNA's owner-drivers.

Thus, for example, at p. 1 of the Petitioner's Memorandum in Support of his Cross-Motion for Summary Judgment, the following statement appears: "The contract contains an Article, Article 24, specifically requiring that weekly pension and welfare contributions be made *on behalf of* individuals who are described as 'owner-drivers' " (emphasis added). *See* Appendix A at 1a.[2] Similar "on behalf of" (or "for") statements appear elsewhere in that memorandum, as well as in ensuing memoranda filed by Petitioner with the District Court. *See* Appendix A at 2a, 3a, 6a, and 7a ("Contributions can be credited to the trust funds *on behalf of* these individuals"; and "This is a case in which certain individual owner-drivers have contributions made *on their behalf* and enjoy coverage under the trust funds"; and "Here the contract requires contributions to be made *on behalf of* owner drivers").

The Trust Funds' representatives were also clear in this regard in their deposition testimony. Thus, Petitioner Mazzei and Trust Fund Administrator Walter Hoff both

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[2] Respondent's Appendix A contains excerpts from two summary judgment memoranda filed in the District Court by Petitioner, in which Respondent has highlighted such "on behalf of" or "for" statements. Respondent's Appendix B contains deposition excerpts.

testified that Article 24.1 of the CBA required contributions to be paid to the Funds by RNA *on behalf of* owner-drivers. Appendix B at 10a-11a, and 13a.

Having presented this case to the District Court on an "on behalf of" theory, it is now too late to claim that the required contributions are only based on the amount of work performed. This attempted mid-stream change of horses by the Petitioner is similar to what the teamsters union attempted in *Labor Rel. Div. v. Teamsters Local 379*, 156 F.3d 13 (1st Cir. 1998). In that case, the union in its prosecution of the case (including a first appeal resulting in a remand and before an arbitrator after the remand) had consistently asserted that it was entitled to have contributions made "on behalf of" truck driver owner-operators. On the subsequent appeal, after the district court refused to enforce the arbitrator's ruling in favor of the union because the required contributions were unlawful under § 302 of the LMRA, the union reversed course and argued that contributions to its funds could be required "for hours worked" by the owner-operators, rather than "on their behalf" (156 F.3d at 16-17). The First Circuit had no problem concluding that this tardy argument had been waived in that case (156 F.3d at 17-18), and that same conclusion applies here. Thus, Petitioner cannot now dispute the Seventh Circuit's conclusion that the CBA requires RNA to make contributions "on behalf of" its owner-drivers since that is the exact result Petitioner sought below, and Petitioner likewise cannot be heard to argue that the Seventh Circuit has amended the parties' CBA by enacting such "on behalf of" language where none exists, Pet. at 8. Petitioner prevailed on the courts to interpret the CBA language in the manner he

proposed, and that necessarily required a further conclusion that the contributions which Petitioner sought to require RNA to make "on behalf of" independent owner-drivers were unlawful under § 302.

III.

THE SEVENTH CIRCUIT'S RULING DOES NOT CONFLICT WITH *WALSH v. SCHLECT* OR WITH ITS OWN PRIOR DECISION

Contrary to Petitioner's claim, the Seventh Circuit's decision does not conflict with this Court's decision in *Walsh v. Schlect,* or with its own prior decision in *Mrowicki.* Instead, the Seventh Circuit's decision is in harmony with both of those cases, as the court, itself, described when it stated (Pet., App. A at 11a-12a):

> . . . . Thus, RNA's contributions are to be made "for each employee" when that employee works at least two days of a work week. The measure of these contributions has no relation to the number of hours these individuals actually work, however, as the amounts are provided for in the CBA. Therefore, this type of contribution is not like the employer contributions the Supreme Court found to be permissible under the LMRA in *Walsh,* which were based on the number of hours worked by the employer's workers. *See Walsh,* 429 U.S. at 407-10.
>
> Because the contributions RNA is required to make under the terms of the CBA are "for each employee," and not like those upheld in *Walsh,* the employment status of RNA's owner-drivers will determine the legality of the contributions under the LMRA. As previously mentioned, employer payments to a trust for the

> exclusive benefit of that employer's employees are permissible under the LMRA. 29 U.S.C. § 186(c)(5). Thus, if RNA's owner-drivers are employees of RNA, the contributions would fall under this exception and be permissible under the LMRA. If the owner-drivers are independent contractors, however, because the LMRA, "excludes any person having the status of independent contractor from the statutory definition of 'employee,' " *Mrowicki*, 44 F.3d at 460, then any RNA contribution to the Funds on behalf of the owner-drivers would violate section 302 of the LMRA.

Other circuit court of appeals decisions further support the Seventh Circuit's conclusion here, *i.e.*, that because the owner-drivers *for* whom the CBA required contributions to be made were not RNA's employees, such contributions are barred by § 302. *See Todd v. Benal Concrete, supra; Labor Rel. Div. v. Teamsters Local 379, supra.*

Indeed, the Seventh Circuit in *Mrowicki* foreshadowed its decision on the facts of this case, when it stated that it would "agree with Mrowicki that if . . . the CBAs had required [the employer] to make contributions to the Fund 'on behalf of' or 'for the benefit' of individuals who were ineligible to receive benefits from the Fund, those contributions would have been prohibited under § 302(a)(1) of the LMRA. *Walsh v. Schlect*, 429 U.S. at 407, 97 S.Ct. at 684. As such they would be unenforceable under § 515 of ERISA, 29 U.S.C. § 1145" (44 F.3d at 461). The CBA language not present in *Mrowicki* is present here, where Article 24.1 of the CBA extended the reach of Article 16 to owner-drivers, thus requiring contributions to the Funds *for* those independent contractors

in violation of LMRA § 302. Thus the Seventh Circuit's decision here is consistent with and required by its prior decision in *Mrowicki*.

In this regard, it should be noted that Petitioner's quotation of the CBA language at issue in *Mrowicki* is incomplete and incorrect. The *Mrowicki* contract language did not provide "that the employer was required to contribute to the Fund 'for each employee covered by said agreement,' " as Petitioner asserts, Pet. at 10.[3] Rather, Article 25 of the *Mrowicki* CBA required owner-drivers to be carried on the payroll and treated as employees (44 F.3d at 454 & n.6); and that, in turn triggered the contribution requirements of that agreement's Article 11, which provided in relevant part that " '[t]he Employer agrees to contribute to [the Fund] . . . [a specified dollar amount] *for each hour worked by each employee* covered by this Agreement during the life of this Agreement' " (44 F.3d at 454, n. 3, emphasis added). Because nothing in that language required the contributions to be made "for the benefit of" those owner-drivers, the § 302 defense of illegality did not apply. *Mrowicki*, 44 F.3d at 461, *citing Walsh v. Schlect*.

Contrast the contract language in *Mrowicki* with that at issue here, as the Seventh Circuit properly did, and it is

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[3] The language quoted by Petitioner appeared in a separate Participation Agreement entered into by the parties (44 F.3d at 454, n. 3), which played no role in the Seventh Circuit's decision. The relevant language relied on by the *Mrowicki* court appeared in Articles 11 and 25 of the CBA, as detailed in the text of this brief.

clear that section 302 bars the contributions sought in this case. Thus, Article 16 of the CBA in this case provides that weekly contributions to the Funds must be made *"for an employee* covered by this Agreement in accordance with the requirements set forth in the appropriate Appendix of this Article," Pet., App. A at 11a. The referenced appendices, in turn, require weekly contributions to the health and welfare fund *"for each employee* covered by this Agreement" who works two days in a week; and weekly contributions to the pension fund *"for each employee* who performs work on any two days in a calendar week," *Id.* This language is vastly different from that present in *Mrowicki*. For a *Mrowicki* (or *Walsh*) analysis to apply here, the CBA would need to call for contributions *"for each week* in which an owner-driver worked for two days." Instead, the language in Article 16 of the CBA, as applied to owner-drivers, unequivocally requires payments *for each owner-driver* who works for two days in a week. That is illegal given their independent contractor status, as both the Seventh Circuit and the District Court properly concluded.[4]

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[4] Petitioner's citation to *Chicago Painters & Decorators Pension, Health and Welfare and Deferred Savings Plan Trust Funds v. Karr Brothers, Inc.*, 755 F.2d 1285 (7th Cir. 1985) (Pet. at 9) is totally inapposite. In *Karr* the parties' agreement prohibited independent contractors from performing bargaining unit work, and because the employer had violated that restriction a damage award measured by the benefit contributions the union funds would have otherwise received had employees performed the work was deemed appropriate. That case is of no relevance here.

Because the Seventh Circuit's decision is consistent with and in no way jeopardizes this Court's ruling in *Walsh*; and because the purported conflict Petitioner raises between this case and the prior *Mrowicki* decision of the Seventh Circuit does not exist, review by this Court is unnecessary. The Petition, therefore, should be denied.

IV.

THIS CASE DOES NOT HAVE FAR-REACHING IMPLICATIONS

The Seventh Circuit's decision here can best be described as routine and non-controversial. Once RNA's owner-drivers were found to be independent contractors (a finding not contested here by Petitioner), the decision that the CBA's requirement that RNA contribute to the Funds *for* each owner-driver was unlawful followed just as night follows day. No other conclusion is possible under *Walsh* and its progeny, including *Mrowicki*, *Todd v. Benal Concrete* and *Labor Rel. Div. v. Teamsters Local 379*. Petitioner, in other words is absolutely wrong in his claim that the practical effect of the Seventh Circuit's decision here "is to overrule this Court's opinion in *Walsh v. Schlect*," Pet. at 8.

In fact, just the opposite is true. The Seventh Circuit's decision is not only consistent with *Walsh*, it is required by *Walsh*. That being so, Petitioner's claim that this case is an important one deserving of review also falls by the wayside. The clear guidelines regarding the type of contract language needed to permit Trust Fund contributions to be made when independent contractors perform work, which Petitioner concedes were in place after *Walsh* (Pet.

at 14-15), are still in place. Simply put, requiring such contributions *for* or on behalf of independent contractors remains illegal; requiring contributions measured by the amount of work performed by independent contractors is not illegal. Those guidelines are not challenged or changed by the Seventh Circuit's decision here.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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APPENDIX A

EXCERPTS FROM PETITIONER'S MEMORANDA FILED WITH THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund,	
Plaintiff,	Judge Coar
v.	Magistrate Judge Bobrick
ROCK-N-AROUND TRUCKING, INC., an Illinois corporation,	
Defendant.	

NO.: 99 C 1975

PLAINTIFF'S MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

Statement of Facts

Teamsters Local Union 786 and Rock N' Around Trucking, Inc. (hereinafter "Rock N' Around") are parties to a labor agreement requiring contributions to the plaintiff, Welfare and Pension Funds. The contract contains an Article, Article 24, specifically requiring that weekly pension and welfare contributions be made ***on behalf of*** individuals who are described as "owner-drivers."

* * *

Summary of Argument

It is the position of the Trust Funds that the Collective Bargaining Agreement in this case requires defendant to remit contributions *on behalf of* owner-drivers employed by that company. The defendant has disputed the audit findings on the basis of certain coverage defenses. Those defenses are based on a Collective Bargaining Agreement with Local 731 I.B.T. that does not cover owner-drivers, and written forms purporting to waive participation in the Local 786 Funds.

It is the plaintiff's position that the contract between defendant and Local 731 I.B.T. does not alter the obligations imposed by Article 24 of the contract with Local 786 1.B.T. (Pl. Ex. No. 1.) It is further plaintiff's position that the waiver forms constitute extrinsic evidence and are inadmissible and fail to alter the unambiguous terms of the contract.

* * *

> and perform work exclusive for the Employer shall be covered by Article 16 – Health & Welfare and Pension and it shall be the Employer's responsibility to make contributions on their behalf.
>
> (Pl. Ex. No. 1, p. 32.)

The above language is clear and unambiguous and imposes a condition upon the defendant to timely remit contributions to the Trust Funds *for* owner-drivers employed by the defendant.

Initially, defendant raised an objection as to the purported legality of contributions made on behalf of individuals who drive and make deliveries of materials for defendant, but to do so through the use of their own trucks.

The Seventh Circuit has held that contributions made on behalf of owner-drivers to Taft-Hartley Trust Funds such as plaintiff's Funds for owner-operators are appropriate and not illegal. Section 302(a)(1) of the L.M.R.A. (29 U.S.C. § 186(a)(1)); *Illinois Conference of Teamsters and Employers Welfare Fund v. Mrowicki*, 44 F.3d 451 (7th Cir. 1994). In that case, the Court analyzed the opinion of the United States Supreme Court in *Walsh v. Schlect*, 429 U.S. 401, 97 S.Ct. 679, 50 L.Ed. 2d 641 (1977). In *Walsh*, the Court found it appropriate for an employer to be liable for payment of a subcontractor's employees' contributions to a Trust Fund. The Supreme Court's analysis of the issues under Section 302 is applicable here as Rock N' Around is obligated by a contract to pay contributions ***on behalf of*** owner-drivers who are eligible to receive benefits from the Trust Funds. There is no legal reason why the defendant's payments ***on behalf of*** owner-drivers should be excused merely because the employees in question own their own trucks.

* * *

This is a case in which the unambiguous language of the Collective Bargaining Agreement requires the Employer to make contributions ***on behalf of*** individuals who lease or operate trucks for the Employer. The obligations to make payments to the Funds imposed by Article 24 of the Local 786 Agreement cannot be altered by any

side letter or agreement. The cases sited above have made it clear that the Trust Funds are entitled to collect these monies, as they are obligated to provide benefits.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund, Plaintiff, v. ROCK-N-AROUND TRUCKING, INC., an Illinois corporation, Defendant.	NO.: 99 C 1975 Judge Coar Magistrate Judge Bobrick

RESPONSE MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Summary of Argument

Rock-N-Around Trucking, Inc. (Defendant) signed an agreement recognizing Teamsters Local 786 as bargaining agent for its employees. Both parties have provided the document to the Court. (Plaintiff's Exhibit No. 1, Defendant's Exhibit No. A-8) The Plaintiff trust funds seek to enforce Articles 16 and 24 of that agreement as they are the beneficiaries of the promises to pay fringe benefit contributions by the Defendant.

The Defendant responds to the claims for these contributions with the following theories:

1. The contract does not mean what it says.

2. The obligations of Articles 16 and 24 have been waived.

3. If the contract means what it says and there has been no waiver of obligation, the obligation should be excused as it is illegal under the Taft-Hartley Act 302(c)5.

* * *

The Defendant agreed to wage and working condition provisions imposed by the contract that required it to treat drivers who owned their trucks as employees. The Union could have a contract which provided for no subcontracting and no owner-drivers. Instead the Agreement calls for restrictions on subcontracting (Article 17) and employee benefits *for* drivers who own their own trucks (Article 24).

The plain and unambiguous language of the Agreement lends itself to only one interpretation, that work performed by drivers who own their own trucks is subject to certain conditions of the contract. *Ill. Conference of Teamsters Welfare Fund v. Mrowicki*, 44 F3d 451, 459 (7th Cir. 1994). Owner-drivers join the Union, pay dues and are entitled to compensation separate and apart from the payment for the use of their vehicle, at least equal to the amount that would have been paid to an employee driver. (Plaintiff's Exhibit No. 1, Article 24.1-4, pg. 32)

* * *

b.

The requirements of Article 24 of the contract do not violate Federal Law.

Defendant argues That Plaintiff claims are barred by 29 U.S.C. 186 the Labor Management Relations Act ("LMRA"). This argument is without merit. As we have argued above, owner-drivers are paid for the use of their equipment and driving services. The payments for driving are compensation for the work of an employee.

Plaintiff has identified through the audit procedure and Paulette Newman's deposition the name and social security number of all owner-drivers. Contributions can be credited by the trust funds ***on behalf of*** each of these individuals. This fact in and of itself distinguishes this matter from cases cited by Defendant. These individuals qualify for benefits from the trust fund earned while they are working as employees paid to drive their trucks. This is a case in which certain individual owner-drivers have contributions made ***on their behalf*** and enjoy coverage under the trust funds. (We note Paulette Newman herself participates in the Local 731 funds, despite performing no contract work.)

The Defendants raise the issue of the LMRA on the basis that Owner-drivers cannot participate in Plaintiff trust funds when some already do. (Plaintiff's Exhibit No. 10, contribution report).

The purpose of the LMRA prohibition is to bar payments except those remitted to a trust fund for benefits. Here the contract requires contributions to be made ***on behalf of*** owner-drivers, who Defendant is required to

treat as employees by the contract, to trust funds that provide employee benefits.

* * *

APPENDIX B

EXCERPTS FROM THE DEPOSITIONS OF PETITIONER AND FUNDS ADMINISTRATOR HOFF

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOU MAZZEI,	)	
	)	
Plaintiff,	)	No. 99 C 1975
vs.	)	Judge Coar
	)	
ROCK-N-AROUND TRUCKING, INC.,	)	
	)	
Defendant,	)	

The deposition of LOU MAZZEI, called by the defendant for examination, pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Courts, taken before Suzanne Thalji, CSR and Notary Public in and for the County of Cook and State of Illinois, on October 7, 1999, at 10:05 a.m., at Two First National Plaza, 20 South Clark Street, 24th Floor, Chicago, Illinois.

* * *

[4] MR. CASEY: Let the record reflect this is the deposition of Lou Mazzei as trustee for the Local 786 pension and health and welfare funds in the case entitled Lou Mazzei as trustee versus Rock-N-Around Trucking, Case No. 99 C 1975, pending before Judge Coar in the Northern District of Illinois.

LOU MAZZEI,

having been first duly sworn, was examined and testified as follows:

* * *

[27] Q With respect to the requirements of Article 24.3, what is your understanding as trustee of the Local 786 pension funds regarding a signatory employer's responsibility to make contributions to the trust funds on behalf of union members who are certificated carriers? That was a long question. I apologize.

A If they work for the employer, they will pay health and welfare and pension by that employer who pays the benefits.

Q So, for example, if Rock-N-Around were to use an owner-driver who was a member of Local 786 and a certificated carrier, then Rock-N-Around is required under this clause to pay contributions to the funds on behalf of that owner-driver, correct?

A Right.

* * *

[28] Q Now, let's look at 24.1 and specifically 24.1-4. We can take a moment, just make sure you read those.

A Okay.

Q What is your understanding of what 24.1-4 requires of signatory employers such as Rock-N-Around who use owner-drivers?

A They would have to have separate checks for wages and equipment like it states, basically the [29] same thing, that if the owner-operator is working for the employer, that the benefits are to be made.

Q So the obligation really is the same as what we just talked about?

A Yes.

Q That the Rock-N-Around or whoever the signatory employer is who uses these owner-drivers has to make benefit contributions to the trust funds on behalf of the owner-drivers? Is that your understanding?

A Yes, the employer does.

* * *

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOU MAZZEI,	)	
	)	
Plaintiff,	)	No. 99 C 1975
vs.	)	
	)	
ROCK-N-AROUND TRUCKING, INC.,	)	
	)	
Defendant,	)	

The deposition of JEFFREY W. HOFF, called by the defendant for examination, pursuant to subpoena, and pursuant to the Rules of Civil Procedure for the United States District Courts, taken before Maria W. Starchvill, CSR and Notary Public in and for the County of Cook and State of Illinois, on October 15, 1999, at 8:07 a.m., at 20 South Clark Street, 24th Floor, Chicago, Illinois.

* * *

[4] MR. CASEY: For the record, I will state that this is the deposition of Jeffrey Hoff in the matter of Lou Mazzei as trustee of Local 786, Pension and Health and Welfare Fund vs. Rock-N-Around Trucking, Inc., Case Number 99 C 1975 pending before Judge Coar.

JEFFREY W. HOFF,

having been first duly sworn, was examined and testified as follows:

* * *

[17] Q Now, in your capacity as Fund Administrator, have you had occasion to interpret Article 24 of the agreement as it applies to the Funds?

A Maybe – how so? I'm not following you.

Q Have you ever had occasion to look at Article 24 and say to yourself or to someone else, Okay, this is what Article 24 means in terms of making contributions to the Funds.

A No.

Q Do you yourself have an understanding as Fund Administrator as to what Article 24 requires signatory contractors like Rock-N-Around Trucking to do when they use owner/drivers in terms of contributions to the Funds?

A I'm sorry, can you repeat that?

Q That was bad. Do you yourself have an understanding of what Article 24 would require a company like Rock-N-Around Trucking to do for owner/drivers with respect to the Funds?

A Yes.

Q What's that understanding?

[18] A As I stated earlier, any owner/driver that is hauling for a company, say for Rock-N-Around, Rock-N-Around is obligated to make contributions on their behalf if they work more than two days a week.

* * *